

In the Matter of Merchant Mariner's Document No. Z-350835-D3 and all other Seaman Documents

Issued to: WAYMON ALPHONSO JENKINS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1147

WAYMON ALPHONSO JENKINS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 3 February 1959, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification fund proved alleges that while serving as a messman on board the United States SS CONSTITUTION under authority of the document above described, on or about 27 August 1958, Appellant placed his hands on the private parts of crew member Harry Feinstein.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and specification. After considering the evidence, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. He entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 26 and 27 August 1958, Appellant was serving as a messman on board the United States SS CONSTITUTION and acting under authority of his Merchant Mariner's Document No. Z-350835-D3 while the ship was at sea.

On the night of 26 August, certain members of the crew had a party in the room occupied by Harry Feinstein, a bellboy, and three others. Although invited, Feinstein was not at the party. Appellant was at the party part of the time. These two seaman were not acquainted with each other.

Appellant returned to Feinstein's room between 0130 and 0200 27 August, about an hour after the party had ended. Feinstein had retired shortly before and was lying awake in his upper bunk when Appellant entered. At this time, the room was lighted only by a light in the passageway. Apparently, the other three occupants of the room were asleep in their bunks. Feinstein had a cover over him when Appellant approached the bunk and took hold of Feinstein's private parts through the cover. Appellant said that he wanted to have some fun and did not release his grip until pushed away by

Feinstein. Appellant left the room after Feinstein told him to get out.

A few minutes later, Feinstein reported the matter to the officer on watch. The Third Mate went below and received substantially the same information from Feinstein as is set forth above concerning the incident. The intruder was not identified at this time. No logbook entry was made about the incident. A few days later, Feinstein identified Appellant, to the Third Mate, as the guilty party but no further action was taken on the ship. This proceeding resulted from a complaint filed by Feinstein with the Coast Guard in New York at some unspecified date.

Appellant has had no prior record during eleven years at sea.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiner's decision is based upon conjecture and conclusions rather than on the evidence in the record. The decision is based upon the completely biased, opinionated and unsubstantiated testimony of Feinstein. The Examiner notes the defects in the Government's presentation of the evidence.

Appearance: Irving Zwerling, Esquire, of New York City of Counsel

OPINION

Counsel for Appellant has not elaborated on the above general contentions which were submitted with the notice of appeal in February 1959. It is my opinion that there are no material errors contained in the record.

The Examiner who heard and observed the witnesses accepted the testimony of Feinstein as representing the true version of what happened and rejected Appellant's story. Feinstein's testimony that he immediately made a complaint is corroborated by the testimony of the Third Mate. Appellant admitted returning to the room and entering when he realized that the party was over. Appellant gave no reason for doing this except to state that he wanted to offer a drink of whisky to the seaman who had invited Appellant to the party if the seaman was still awake. When asked why he entered the room when he could see that the party had ended, Appellant replied that he went into the room "because there was no reason why I shouldn't have gone in ." This seems to be a very weak explanation.

On the other hand, the record does not disclose any motive for fabrication, on the part of Feinstein, about another crew member, especially when they did not even know each other prior to this time. Appellant's testimony agreed with Feinstein's that they did not know each other. Nevertheless, Feinstein first made a report to the Third Mate in the early hours of the morning and then, consistent with this and after further consideration, he reported the matter to the Coast Guard in New York after no action had been taken by personnel on the ship. There does not appear to have been any reason for falsification by Feinstein with respect to either of these reports or complaints.

Belief of Feinstein's testimony is further enhanced by proof of fact that he made a fresh complaint to the Third Mate. Although this matter was not recorded on the ship in a logbook or other-wise, the absence of such a record is not controlling in these proceedings.

It is my conclusion that there is substantial evidence in the record to support the allegations contained in the specification. Consequently, I do not agree with the contention that the Examiner's decision is based on conjecture and unsuitable evidence.

Appellant does not clarify what is meant by the contention that the Examiner notes the defects in the Government's presentation of the evidence. Therefore, it can only be stated that no such defect is apparent.

The order of revocation imposed by the Examiner is the only suitable one for this very serious type of offense.

ORDER

The order of the Examiner dated at New York, New York on 3 February 1959, is **AFFIRMED**

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 26th day of February 1960.